

## 37 Am. Jur. 2d Fraud and Deceit § 180

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### Fraud and Deceit

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#### IV. False Representations

##### G. Representations and Statements as to Particular Matters

##### 3. Value, Cost, and Income of Property

##### c. Income, Profits, or Rental Productivity

## § 180. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#) , 27, 28

### A.L.R. Library

[False representations as to income, profits, or productivity of property as fraud, 27 A.L.R.2d 14](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 115](#) (Complaint, petition, or declaration—For damages—Fraud in sale of business—Misrepresentation as to past profits)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 116](#) (Complaint, petition, or declaration—For rescission—Fraud in sale of business combined with lease of business—Misrepresentation as to past profits and value of business inventory)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit § 117](#) (Complaint, petition, or declaration—For rescission—Fraud in sale of dry cleaning business—Misrepresentation as to income, expenses, and lack of competing business)

Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 174, 177, 178 (Complaint, petition, or declaration for fraud in sale of land by representations as to rental income)

A false representation as to past or present rents, profits, or income has often been held to constitute a sufficient basis for an action for damages or rescission on the ground of fraud.<sup>1</sup> Thus, a false representation by an owner of land, or the owner's agent, seeking to dispose of the property commercially, as to the present or past income,<sup>2</sup> profits, or produce<sup>3</sup> thereof, or as to the amount of rent received therefor,<sup>4</sup> is regarded as a statement of fact upon which fraud may be predicated if it is false since these are matters within the representor's own knowledge. The same is true of a false assertion that the profits of a business are or have been a certain sum annually,<sup>5</sup> or a false statement as to what a business now earns<sup>6</sup> or its gross receipts.<sup>7</sup> Thus, false representations concerning the past "volume of business" or "gross income from sales" or gross rents may constitute fraud.<sup>8</sup>

While in most instances a statement as to the amount of past or present rents, profits, or income, made in the form of a statement of fact, is treated as one of fact and not of opinion,<sup>9</sup> where a statement concerning rents, profits, or income is understood to be merely an estimate or opinion, the courts will treat it as such even though the substance of the statement could have been embodied in a statement of fact,<sup>10</sup> particularly where a buyer rushes into the sales transaction without insisting upon or awaiting receipt of any more definitive financial information.<sup>11</sup> However, a vague statement that a property or business is "profitable," or a "money-maker," or the like, may sometimes be treated as one of fact.<sup>12</sup>

In cases involving false representations as to rents, profits, or income, the question whether there is actionable fraud is determined with respect to the intelligence and experience of the victim of the fraud, rather than by what the effect would have been on the average person.<sup>13</sup> This is a test that works both ways. For example, if the person complaining of fraud is one who has great experience in the field of business in which the transaction occurred, the court may find that the person was not in fact deceived by the false statement but decided to enter into the contract because the person believed that the consideration was proper even though the income, rents, or profits were less than represented, but the average person would have had a cause of action for fraud.<sup>14</sup>

Fraud may sometimes consist of understating, rather than overstating, income, rents, or profits, as where the representor is required to make a payment in proportion to the amount of the representor's income, rents, or profits, and the representor understates them to cut down the amount of his or her payment.<sup>15</sup>

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#### Footnotes

- 1 [Hegg v. Dickens](#), 270 Ark. 641, 606 S.W.2d 106 (Ct. App. 1980); [Head v. Benjamin Rich Realty Co.](#), 55 Mich. App. 348, 222 N.W.2d 237 (1974); [Hampton v. Sabin](#), 49 Or. App. 1041, 621 P.2d 1202 (1980).  
In exchange transactions, fraud may be predicated on false representations concerning the past or present income, rentals, or profits of the property exchanged. [Pustelniak v. Vilimas](#), 352 Ill. 270, 185 N.E. 611 (1933); [Rudnick v. Rudnick](#), 281 Mass. 205, 183 N.E. 348 (1932).
- 2 [Hegg v. Dickens](#), 270 Ark. 641, 606 S.W.2d 106 (Ct. App. 1980); [Saba v. Miller](#), 327 Mich. 363, 41 N.W.2d 894 (1950); [Bertram v. Kempster](#), 216 S.W.2d 494 (Mo. 1949).
- 3 [Miller v. Porter](#), 218 Ark. 841, 238 S.W.2d 940 (1951); [Eck v. McMichael](#), 176 Cal. App. 2d 368, 1 Cal. Rptr. 369 (4th Dist. 1959).

- 4                   Kackley v. Webber, 310 Ky. 285, 220 S.W.2d 587, 9 A.L.R.2d 500 (1949); Kabatchnick v. Hanover-Elm  
Bldg. Corp., 328 Mass. 341, 103 N.E.2d 692, 30 A.L.R.2d 918 (1952).  
An investigation is not necessary where a specific false statement as to rents is reasonably relied upon and  
knowingly made. Upledger v. Vilanor Inc., 369 So. 2d 427 (Fla. 2d DCA 1979).
- 5                   Hegg v. Dickens, 270 Ark. 641, 606 S.W.2d 106 (Ct. App. 1980); Furtado v. Gemmell, 242 Or. 177, 408  
P.2d 733 (1965).
- 6                   Miller v. Porter, 218 Ark. 841, 238 S.W.2d 940 (1951); Hawthorn-Mellody, Inc. v. Driessen, 213 Kan. 791,  
518 P.2d 446 (1974).
- 7                   Miller v. Porter, 218 Ark. 841, 238 S.W.2d 940 (1951) (dairy herd).
- 8                   Automobile Ins. Co. of Hartford, Conn. v. Barnes-Manley Wet Wash Laundry Co., 168 F.2d 381 (C.C.A.  
10th Cir. 1948); Horner v. Wagy, 173 Or. 441, 146 P.2d 92 (1944).
- 9                   Spiess v. Brandt, 230 Minn. 246, 41 N.W.2d 561, 27 A.L.R.2d 1 (1950).
- 10                  Carlson v. Brickman, 110 Cal. App. 2d 237, 242 P.2d 94 (1st Dist. 1952); Miller v. Protrka, 193 Or. 585,  
238 P.2d 753 (1951).
- 11                  In re Wright, 223 B.R. 886 (Bankr. E.D. Pa. 1998) (applying Pennsylvania law).
- 12                  Spiess v. Brandt, 230 Minn. 246, 41 N.W.2d 561, 27 A.L.R.2d 1 (1950).
- 13                  Hefferan v. Freebairn, 34 Cal. 2d 715, 214 P.2d 386 (1950); Bertram v. Kempster, 216 S.W.2d 494 (Mo.  
1949).
- 14                  King v. Miller, 97 Cal. App. 2d 702, 218 P.2d 554 (1st Dist. 1950); Fote v. Reitano, 46 So. 2d 891 (Fla. 1950).
- 15                  Automobile Ins. Co. of Hartford, Conn. v. Barnes-Manley Wet Wash Laundry Co., 168 F.2d 381 (C.C.A.  
10th Cir. 1948); Gregory v. Chemical Waste Management, Inc., 38 F. Supp. 2d 598 (W.D. Tenn. 1996)  
(applying Alabama law).

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